REMARKS

Claims 1-38 are pending in this case. The examiner rejected claims 1-38. Claims 1, 19, 20 and 38 have been amended. Claims 1-38 remain pending.

A. Drawings.

The examiner has objected to informalities in the drawings as follows.

The drawings were objected to because in FIG. 3 item 316 SYMBOL LIBRARY NN should be SYMBOL LIBRARY M. Appropriate correction has been made in the attached Replacement Sheet.

The drawings were objected to because in FIG. 4, item 460 is not described in the specification. The applicant has removed reference character 460 from FIG. 4.

The drawings were objected to because in FIG. 3, item 370 is referred to in the specification as both a run-time engine and as a run-time library. The applicant calls the examiner's attention to page 25, line 12, wherein run-time library and run-time engine are referred to as interchangeable words for the same thing. Thus, item 370 is a run-time engine, which is the same thing as a run-time library.

The drawings were objected to further because no descriptions are provided for FIG. 11 items 1100, 1101a, 1101b, 1102, 1103a, 1104 and 1110; FIG. 12 items 1200, 1201a, 1201b, 1202, 1203a and 1204; FIG. 13 items 1300, 1301a, 1301b, 1302, 1304 and 1310; FIG. 14 items 1400, 1401a, 1401b, 1402, 1403a, 1404 and 1406; and FIG. 15 items 1500, 1501a, 1501b, 1502, 1503a, 1504 and 1506. The applicant calls the attention of the Examiner to statements for each of FIGs. 11-15 stating that "several of the Steps in [FIGs. 11-15] are the same as in Fig. 10, and are not repeated here in the interest of brevity" at p. 33, lines 25-26; p. 34, lines 10-12; p. 34, lines 23-25; p. 35, lines 10-12; and p. 35, lines20-22; respectively. The applicant asserts that the

statements that the cited items are the same as in FIG. 10 is sufficient description. The applicant hereby requests that in the interest of brevity that the objection be withdrawn.

B. Rejections under 35 U.S.C. § 103(a).

The examiner rejected claims 1-38 under 35 U.S.C. § 103 as unpatentable over U.S. Patent No. 6,493,871 to Thomas McGuire et al. (hereinafter "McGuire"), in view of U.S. Patent No. 6,023,620 to Lars Hansson (hereinafter "Hansson").

1. Rejections moot due to claim amendments.

The applicant has amended independent claims 1, 19, 20 and 38, rendering the rejection moot. The applicant has amended independent claims 1, 19, 20 and 38 to claim "a wireless telephone" as suggested by the examiner in Section 10 of the Final Office Action.

2. Rejections traversed; response to Final Office Action arguments.

Further, the applicant traverses the rejection with respect to claims 1-38 as follows. The Final Office Action argues that McGuire is analogous art.

The applicant responds to the Final Office Action statements as follows. Under the first bullet in Section 10, The Final Office Action quoted McGuire stating in part "the invention may be practiced ***with other computer system configurations, including*** hand-held devices, multi-processor systems, microprocessor based or programmable consumer electronics, network PCs, minicomputers, mainframe computers and the like." McGuire, col. 5, lines 25-26 (emphasis added). McGuire, thus, clearly limits itself to computer system configurations. A wireless telephone (e.g., cellular telephone) is not a computer system configuration.

The Final Office Action quoted the above McGuire quote as well and printed in bold the following items: **hand-held devices, microprocessor based or programmable consumer electronics and network** PCs. The Final Office Action

stated that a cellular telephone is basically a hand-held device. The applicant concedes that a cellular telephone is a hand-held device. But a cellular telephone is not a computer system configuration. A hand-held device as described in McGuire must be a computer system configuration. McGuire does not teach a hand-held wireless communication device – only a hand-held computer system configuration.

Regarding the comments under the third bullet in Section 10 of the Final Office Action, the Examiner relies on the hand-held device of McGuire again. The applicant respectfully asserts that the hand-held device of McGuire would not necessarily have the same challenges of a wireless telephone, namely, much less memory available, much less information receiving bandwidth and more limited processing power. A hand-held computer system configuration is not a wireless communication device. As such, a hand-held computer system configuration does not have extensive memory and processing power dedicated to wireless communication. Nor does a hand-held computer system configuration have the limited information receiving bandwidth of wireless communication compared to wireline communication.

The Final Office Action states further that McGuire and the present invention are both categorized under U.S. Patent Classification 717/173, software upgrading or updating, including downloading. The applicant asserts that the U.S. Patent Classification is not definitive of the question whether a reference is in the same field as an invention. Whether a reference is analogous art must be decided based on the Federal Circuit interpretation of 35 U.S.C. § 103 as given in Wang Laboratories, Inc. v. Toshiba Corp., 993 F.2d 858 (Fed. Cir. 1993).

3. Rejections traversed; McGuire is non-analogous art.

The applicant re-asserts and explains further that McGuire is non-analogous art and is therefore impermissible prior art under 35 U.S.C. § 103(a). Wang

Laboratories, Inc. v. Toshiba Corp., 993 F.2d 858 (Fed. Cir. 1993) gives two alternative tests to determine whether prior art is analogous. First, the prior art must be in the same field of endeavor; or, second, the prior art must be "reasonably pertinent to the particular problem to be solved" by the inventor in order to be considered as prior art. Id. at 864. See also, MPEP § 2141.01(a), section "Analogy in the Electrical Arts".

The patents in question in Wang, U.S. Pat. No. 4,656,605 (hereinafter, "the '605 patent") and U.S. Pat. No. 4,727,513 (hereinafter, "the '513 patent"), claimed memory module structures. The claim (there was only one claim) of the '605 patent claims, among other things, "eight data memory chips for storing digital data... a ninth memory chip for storing error detection and correction information... and [a circuit board] for mounting thereon only in a single row said nine memory chips". Similarly, claim 1 of the '513 patent claims "nine data memory chips for storing digital data... [a circuit board] having a length and width adequate for mounting thereon only in a single row said nine memory chips".

The prior art, U.S. Pat. No. 4,281,392 assigned to Allen-Bradley Company (hereinafter "the Allen-Bradley art") related to computing. More specifically, the Allen-Bradley art related to memory modules for computing. Still more specifically, the Allen-Bradley art described memory modules for computing with eight and nine memory chips in a row. Despite these similarities to the '605 and '513 patents, the Federal Circuit held that the Allen-Bradley art "is not in the same field of endeavor as the claimed subject matter merely because it relates to memories. It involves memory circuits in which modules of varying sizes may be added or replaced; in contrast, the subject patents teach compact modular memories." Wang at 864.

Accordingly, regarding the first test of whether prior art is analogous, McGuire is not from the same field of endeavor as the present invention. The

differences in the field of endeavor between McGuire and the present invention are much greater than between the Allen-Bradley art and the '605 and '513 patents in Wang. McGuire applies to the field of computers. The present invention applies to wireless communication devices, such as, for example, cell phones.

Regarding the second test for analogous art, McGuire is not reasonably pertinent to the problem to be solved in the present invention.

Referring again to the facts discussed in Wang, the court relied heavily on differences in size, components and purpose of the memory modules between the '605 and '513 patents and the Allen-Bradley art. Wang at 864-5. Specifically, the Allen-Bradley art memory modules used Static Random-Access-Memory (SRAM) or Read-Only-Memory (ROM) and did not suggest using Dynamic Random-Access-Memory (DRAM). The invention in the '605 and '513 patents used DRAM, though DRAM was not claimed. Further, the invention in the '605 and '513 patents were "designed to provide compact computer memory with minimum size, low cost, easy repairability, and easy expandability." Id. at 865. Contrarily, "size was not a consideration in the Allen-Bradley work." Id. The Federal Circuit concluded, "there is substantial evidence in the record to support the finding that the Allen-Bradley prior art is not reasonably pertinent and is not analogous." Id.

McGuire is not reasonably pertinent to the present invention for similar reasons. More so, as will be demonstrated below, McGuire is less pertinent to the problem in the present invention than the Allen-Bradley art was to the '605 and '513 patents in Wang.

First, computers are general purpose processing machines. Telecommunications devices, such as cell phones, are dedicated purpose devices. The processors used in cell phones are typically different from the processors used in

computers. Typically, an Advanced RISC Machine (ARM) processor is used in cell phones, whereas computers typically use x86-architecture based processors (e.g., Pentium® processors by Intel®). The limited ARM processor in a cell phone must devote a large fraction of its processing resources to processing communication calls, whereas a computer can more flexibly allocate the extensive processing resources of the x86-architecture processor to various tasks, including communications or any other task. Accordingly, software updating methods used for computers would not "logically commend [themselves] to an inventor's attention in considering his problem", that of updating software on a wireless communication device. Wang at 864 citing In re Clay, 966 F.2d 656, 659, 23 USPQ2d 1060, 1061 (Fed. Cir. 1992).

Second, computers typically have virtually unlimited memory (compared to a wireless communication device). Thus, in updating computer software, memory consumption is not a concern. Contrarily, in updating wireless communication device software, the software update inventor must be acutely aware of memory consumption. The inventor of the present invention designed his updating systems and methods carefully avoiding wasting memory resources on the wireless communication device.

Specifically, the software is divided into sections and symbol libraries. A symbol library is a subset of a section whose size may be smaller than or equal to the size of the section. One or more libraries reside in a section. By allowing updating of sections or libraries, the inventor allows for portions of the entire wireless communication device software to be updated, rather than requiring an update of the entire wireless communication device software. More specifically, the inventor provided for section address tables and symbol offset address tables, to enable the updating of sections or libraries without breaking the software.

Third, computers typically have an extensive user interface including a large display and advanced audio output capabilities, whereas cell phones have much more limited user interfaces, including much smaller displays and much simpler audio outputs.

Fourth, wireless communication devices are smaller than computers. Wireless communication device designers cannot add memory, processing power, input/output devices (such as DVD drives, USB ports, etc.) at will, as computer designers typically can. Similarly, the inventors of the '605 and '513 patents in Wang were constrained by size limitations whereas the designers of the Allen-Bradley work were not. As stated above, the Federal Circuit held "size was not a consideration in the Allen-Bradley work. Thus, there is substantial evidence in the record to support a finding that the Allen-Bradley prior art is not reasonably pertinent and is not analogous." Wang at 865. Similarly, McGuire is not analogous to the present invention.

Fifth, the reference itself (McGuire) states that the methods of McGuire could be applied to other devices, but conspicuously fails to mention wireless communication devices:

> Although not required, the invention will be described in the general context of computer-executable instructions, such as program modules, being executed by a personal computer. Generally, program modules include routines, programs objects, components, data structures, etc. that perform particular tasks or implement particular abstract data types. Moreover, those skilled in the art will appreciate that the invention may be practiced with other computer system configurations, including hand-held devices, multi-processor systems, microprocessor based or programmable consumer electronics, network PCs, minicomputers, mainframe computers, and the like.

McGuire, col. 5, lines 25 to 36. This conspicuous omission highlights the fact that communications and computing are non-analogous as defined by the Federal Circuit in Wang.

The applicant asserts that the invention of claim 1 cannot be rendered obvious by McGuire and Hansson, because McGuire is non-analogous art. Accordingly, the applicant requests an allowance of claim 1 and claims 2-18, which depend from claim 1.

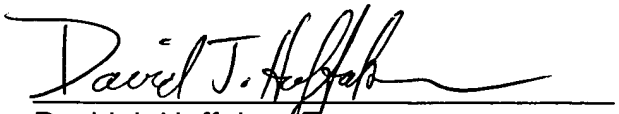
Independent claims 19, 20 and 38 have also been rejected under 35 U.S.C. § 103(a) in view of McGuire. As stated above with respect to claim 1, the applicant asserts that McGuire is non-analogous art. Accordingly, the applicant requests an allowance of claims 19, 20 and 38 and further, of claims 21-37, which depend from claim 20.

C. Conclusion

It is believed that the application is in condition for allowance and reconsideration is earnestly solicited.

Respectfully Submitted,

Date: August 3, 2005



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APPENDIX A
(Replacement Drawing Sheets – 2 pages)